

**IT IS THE VENDOR'S RESPONSIBILITY TO CHECK
FOR ADDENDUMS PRIOR TO SUBMITTING PROPOSALS**

NOTICE TO BIDDERS SPECIFICATION NO. 06-259

The City of Lincoln, Nebraska intends to purchase and invites you to submit a sealed bid for:

Seeding at the Bluff Road Landfill Phase 3 Capping System (Project # 569343), Phase 10 Liner System (Project #569282), and Storm Water Basin Relocation (Project #569283)

Sealed bids will be received by the City of Lincoln, Nebraska on or before **12:00 noon Wednesday, September 13, 2006** in the office of the Purchasing Agent, Suite 200, K Street Complex, Southwest Wing, 440 South 8th Street, Lincoln, Nebraska 68508. Bids will be publicly opened and read at the K Street Complex.

Bids may be downloaded from the City's website at www.lincoln.ne.gov Keyword: Bid. Prospective submitters must monitor the bid listing for any addendums.

Bidders should take caution if U.S. mail or mail delivery services are used for the submission of bids. Mailing should be made in sufficient time for bids to arrive in the Purchasing Division, prior to the time and date specified above. Late bids will not be considered. **Fax or e-mail bids are not acceptable. Bid response must be in a sealed envelope.**

COMPANY NAME _____

**PROPOSAL
SPECIFICATION NO. 06-259**

**Seeding at the Bluff Road Landfill
Phase 3 Capping System (Project # 569343), Phase 10 Liner System (Project #569282),
and Storm Water Basin Relocation (Project #569283)**

**BID OPENING TIME: 12:00 NOON
DATE: Wednesday, September 13, 2006**

The undersigned, having full knowledge of the requirements of the City of Lincoln for the below listed phases and the contract documents (which include Notice, Instructions, this Proposal, Specifications, Contract, and any and all addenda) and all other conditions of the Proposal, agrees to enter into a contract with the City the below listed fees for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for fees listed below.

ADDENDA RECEIPT: The receipt of addenda to the specification numbers ____ through ____ are hereby acknowledged. Failure of any submitter to receive any addendum or interpretation of the specifications shall not relieve the submitter from any obligations specified in the request. All addenda shall become part of the final contract document.

BIDDING SCHEDULE

ITEM	DESCRIPTION	UNIT	EST QTY	UNIT COST	TOTAL COST
1	Mobilization/Demobilization	LS	1		\$ _____
2	Seeding / Top of Cap	Acre	5	\$ _____	\$ _____
3	Seeding / Sides of Cap	Acre	10	\$ _____	\$ _____
4	Seeding / Perimeter Ditch	Acre	3	\$ _____	\$ _____
5	Seeding / Disturbed Areas	Acre	10	\$ _____	\$ _____
6	Fertilizing	Acre	2	\$ _____	\$ _____
7	Mulching	Acre	28	\$ _____	\$ _____
8	Cover Crop	Acre	15	\$ _____	\$ _____

Total Cost Lump Sum (Items 1 through 8 above):

_____ Dollars
(use words)
(\$ _____)
(use figures)

If increases or decreases on these quantities occur, the Contract Price is to be adjusted by Change Order on the basis of the unit prices. Bidder agrees that the unit prices represent full compensation for the labor, material, and equipment required to furnish and install the item, including all allowances for overhead and profit for each type and unit of Work called for.

OWNER will award the project on the total Bid Price.

BIDDER ACKNOWLEDGMENTS:

Bidder acknowledges that estimated quantities for unit price work are not guaranteed and are solely for the purpose of comparison of Bids. Final payment for all adjustment unit quantities will be based upon actual quantities.

BIDDER accepts the provisions of the liquidated damages in the event of failure to complete the Work within the times specified.

SCHEDULE: By submitting this Proposal, BIDDER acknowledges and agrees to meet all Project completion dates as provided in the Contract Agreement. The undersigned agrees to furnish the required Bonds and enter into an agreement within ten (10) calendar days after Owner's acceptance of this Bid.

The full name and address of each person, firm, or corporation interested in the Proposal must be here stated.

Bids may be inspected in the Purchasing Division during normal business hours after tabulation and review by a Purchasing Agent. Bid tabulations can be viewed on our website at: lincoln.ne.gov Keyword: Bid The Intent to Award will be listed on the website when a recommendation is received from the Department.

**SEEDING AT THE BLUFF ROAD LANDFILL
PHASE 3 CAPPING SYSTEM (PROJECT # 569343),
PHASE 10 LINER SYSTEM (PROJECT #569282), AND
STORM WATER BASIN RELOCATION (PROJECT #569283)
Specification 06-259**

1. GENERAL

- 1.1 Intent of specifications is to retain a Contractor to provide grass seeding after completion of projects currently in the construction phase at the Bluff Road Landfill.
 - 1.1.1 The work shall consist of furnishing and placing the seed, fertilizer and mulch at locations identified by the owner.
 - 1.1.2 Preparation of the seed bed shall be considered a subsidiary obligation of the Contractor and all costs in connection with this activity shall be included in the prices bid.
- 1.2 Specifications and Drawings (SPEC #06-172) for work currently in progress may be viewed at the Bluff Road Landfill (shop office) during normal business hours.
- 1.3 All Work shall be substantially complete by June 15, 2007.

2. QUALITY ASSURANCE

- 2.1 Standards
 - 2.1.1 American Standard for Nursery Stock (ASNS).
 - 2.1.2 Standard Methods of the Association of Official Agricultural Chemists.
 - 2.1.3 United States Department of Agriculture (USDA), Federal Seed Act
 - 2.1.4 Nebraska Department of Roads (NDOR), Standard Specifications for Highway Construction.
 - 2.1.5 City of Lincoln, Standard Specifications for Municipal Construction.

3. SUBMITTALS

- 3.1 Certificates of inspection as required by governing authorities.
- 3.2 Manufacturer's certified analysis, or, where applicable, analysis of recognized laboratory made in accordance with methods established by the Association of Official Agricultural Chemists.
- 3.3 Signed copies of the vendor's statement for seed mixture, stating botanical and common name, place of origin, strain, percentage of purity, percentage of germination, and amount of pure live seed (PLS) per bag.
- 3.4 Written statement for fertilizer showing the name / address of person guaranteeing the fertilizer and the analysis showing the minimum percent of plant food claimed.
- 3.5 Proof of non-availability if specified seed or other materials are not obtainable.

4. SCHEDULING

- 4.1 Notify owner a minimum of 48 hours prior to commencing any work.
- 4.2 Planting schedules to be determined in relation to finish grading by construction contractor.
 - 4.2.1 Substantial Completion of Phase 10 Liner is November 6, 2006 with current project schedule identifying completion on October 9, 2006.
 - 4.2.2 Substantial Completion of Phase 3 Cap is November 6, 2006 with current project schedule identifying completion on October 9, 2006.
 - 4.2.3 Substantial Completion of Storm Water Pond is March 16, 2007 with current project schedule identifying completion on December 6, 2006.

5. PLANTING SEASON

- 5.1 The planting season for all materials shall be:
 - 5.1.1 Spring – March 1 to June 30 with optimal time period being April 15 to May 30.
 - 5.1.2 Fall – August 1 to December 31 with optimal time period being September 1 to October 1.
- 5.2 Seeding shall be performed during the optimal period only, except when prior written permission is obtained from the owner.
- 5.3 The actual seeding shall be performed during those times in each season which are normal for such work as determined by weather conditions, and accepted practice in the locality.
- 5.4 No work shall be performed when the ground is frozen, wet or otherwise not tillable, or when even distribution of materials cannot be obtained.

6. MATERIALS

- 6.1 Seed
 - 6.1.1 Seed shall be fresh, clean, new-crop seed labeled in accordance with the United States Department of Agriculture Federal Seed Act in effect on the date of bidding.
 - 6.1.2 Seed shall be identified by species, proportions and minimum percentages of purity, germination and maximum percentage of weed seed (as specified).
 - 6.1.3 All material shall comply with applicable State and Federal laws, including inspection certifications.
 - 6.1.4 All material furnished shall be true to name and type, and legible labels shall be furnished to insure that all species, varieties, boxes, bundles, bales or other containers are identified. The information on the label shall cover the botanical genus, species, and common name or variety.
 - 6.1.5 Substitution of specified materials shall not be permitted unless authorized by the owner.
- 6.2 Mulch
 - 6.2.1 Mulch shall be dry, cured native prairie hay, native grass hay from seed growing operations, native grass hay from planted warm season grass stands, or threshed grain straw of oats, wheat or rye.
 - 6.2.2 Mulch material shall not contain excessive quantities of matured seeds of noxious weeds or other grass species that will be detrimental to seeding.
 - 6.2.3 Mulch that is fresh, or excessively brittle, or which is decomposed will be rejected.
 - 6.2.4 Mulch shall be from a locally available source.
- 6.3 Fertilizer
 - 6.3.1 Material must meet applicable State and Federal regulations and shall be delivered in standard weight bags or bulk.
 - 6.3.2 Cyanic compound or hydrated lime is not permitted in mixed fertilizers.
 - 6.3.3 Components of bulk blends must be close in particle size to prevent segregation.
 - 6.3.4 For areas seeded with perennial grasses:
 - 6.3.4.1 Phosphate (P_2O_5) 80 LBS per acre.
 - 6.3.4.2 Nitrogen (NH_4NO_3) 30 LBS per acre.
 - 6.3.5 For all other areas:
 - 6.3.5.1 Phosphate (P_2O_5) 30 LBS per acre.
 - 6.3.5.2 Nitrogen (NH_4NO_3) 30 LBS per acre.

7. SPECIFIED SEED

- 7.1 For use on the Phase 3 Cap (top) where slopes are less than 4H:1V. Park or South Dakota Common are approved Bluegrass varieties.

Grasses	Minimum Percent Germination	Minimum Percent Purity	LBS PLS per Acre
Kentucky Bluegrass	85	95	90

- 7.2 For use on the Phase 3 Cap (sides) where slopes are 4H:1V or steeper.

Grasses	Variety	Minimum Percent Germination	LBS PLS per Acre
Inter Wheatgrass	Manska	95	10
Western Wheatgrass	Barton	80	3
Slender Wheatgrass		80	4
Crested Wheatgrass	Hycrest	90	3
Smooth Brome		80	2
Oats	Russell	90	20

- 7.3 For perimeter ditch and other waterways.

Grasses	Minimum Percent Germination	Minimum Percent Purity	LBS PLS per Acre
Tall Fescue	90	85	190
Reed Canarygrass	90	90	240

- 7.4 For side slopes of active landfill areas and other disturbed areas.

Grasses	Minimum Percent Germination	Minimum Percent Purity	LBS PLS per Acre
Tall Fescue	90	85	100
Brome	90	90	20
Oats	1 bushel / acre		

8. SOIL PREPARATION

- 8.1 Apply Glyphosate and / or Banvel as appropriate to areas where perennial grasses will be seeded in order to terminate all weeds, thistle and undesirable growth 5 days prior to seeding.
- 8.2 Apply 2,4-D as appropriate to all areas if broadleaf control is necessary.
- 8.3 Herbicide application shall be in accordance with manufacturer's instructions.
- 8.4 Areas shall be prepared not more than 3 days prior to the installation of seed.
 - 8.4.1 Loosen topsoil to a minimum depth of 4 inches and not more than 6 inches parallel to the land contours with a disk, harrow, rake or other approved means, using multiple passes if necessary.
 - 8.4.2 Remove stones over 1 inch in any dimension and sticks, roots, rubbish and other extraneous matter.
 - 8.4.3 Existing weed stubble, small weeds and other vegetation shall be incorporated completely into the soil.
 - 8.4.4 Loosen crusted soils and repair any areas where soil has eroded prior to fertilizing or seeding.

9. FERTILIZING

- 9.1 Work shall consist of furnishing and applying synthetic organic and/or inorganic nutrients to the soil.
- 9.2 Apply with mechanical spreaders or hydraulic seeders at the rates specified and in a manner that ensures uniform coverage over the prepared area.
- 9.3 Fertilizers shall be incorporated into the soil to a depth of at least 2 inches before seeding.

10. SEEDING

- 10.1 Work shall consist of furnishing and placing the seed into properly prepared seed bed.
- 10.2 Sow seeds using mechanical driven drills or seeders.
 - 10.2.1 Seed grasses at specified rate and at depth recommended by the manufacturer.
 - 10.2.2 Provide frequent agitation and mixing in the seed box to prevent heavy seeds from sifting to the bottom.
- 10.3 Stop work when satisfactory results cannot be obtained because of drought, high winds, excessive moisture or other factors.
- 10.4 Immediately protect against wind and water erosion by mulching all areas.

11. MULCHING

- 11.1 Work shall consist of providing, placing and crimping mulch on the areas seeded as specified.
- 11.2 Apply mulch immediately and not more than 24 hours after seeding.
- 11.3 Spread mulch uniformly and in a continuous blanket over the seeded areas.
 - 11.3.1 Hay shall be applied at a rate of 2 tons per acre.
 - 11.3.2 Straw shall be applied at a rate of 2.25 tons per acre.
- 11.4 Anchor mulch using a mulch crimper with approximately 6 inch cleats or other approved equipment with perpendicular, dull, disc blades.
 - 11.4.1 Apply loose enough to allow sunlight to penetrate and air to circulate.
 - 11.4.2 Apply thick enough to partially shade the ground, reduce water evaporation and reduce wind and water erosion.
 - 11.4.3 Mulch shall be crimped the same day it is applied.

12. COVER CROP

- 12.1 Cover crops may be used in the following situations:
 - 12.1.1 The optimal seeding window has passed.
 - 12.1.2 Quick cover is necessary to prevent erosion prior to the completion of the Work
 - 12.1.3 Immediate coverage is desired until the specified seed is established (planted in conjunction with the specified seed).

- 12.2 Late Season (Winter)
 - 12.2.1 Planted in late summer or fall.
 - 12.2.2 Plants selected need to possess enough cold tolerance to survive hard winters.

13. MAINTENANCE AND REPLACEMENT

- 13.1 Maintain planted areas immediately after planting and continue until the seeded area has sprouted and formed a uniform surface free of weeds, eroded or bare areas.
 - 13.1.1 Maintenance period is 210 days, minimum.
 - 13.1.2 Begins at completion of the planting of an entire area.
 - 13.1.3 Maintenance activities may include, but are not limited to, controlling pests and diseases, watering, and applying herbicide to control weed growth, re-seeding areas where plant growth is thin, weak or dead, re-grading / re-seeding areas where erosion has caused damage, and re-mulching areas as necessary.
- 13.2 Unacceptable plantings are those areas that do not meet the quality of the specified material, produce the specified results, or were not installed by the specified methods.

14. MEASUREMENT

- 14.1 The owner shall take all measurements using a GPS unit and compute quantities accordingly.
- 14.2 Area measurements shall be computed to the nearest 0.1 acre.
- 14.3 The Contractor may be present when areas are measured.

15. NON – PAYMENT FOR REJECTED OR DEFECTIVE MATERIALS

- 15.1 Materials wasted or disposed of in a manner that is not acceptable.
- 15.2 Materials determined as unacceptable before or after placement.
- 15.3 Materials not completely unloaded from the transporting vehicle.
- 15.4 Materials placed beyond the lines and levels of the Work.
- 15.5 Materials remaining on hand after completing of the Work.

16. BASIS OF PAYMENT

- 16.1 All Work not specifically set forth as a pay item in the Bid Form shall be considered a subsidiary obligation of the Contractor and shall be included in the prices bid.
- 16.2 Mobilization / Demobilization
 - 16.2.1 Payment shall be made on the basis of the fixed lump sum price bid.
 - 16.2.2 The lump sum price shall include costs incurred for bonds, insurance, permits, mobilization to the project location and set up of equipment, demobilization, cleanup and all other mobilization / demobilization which is not covered under another bid item.
- 16.3 Seeding
 - 16.3.1 Payment shall be made on the basis of the unit price for each type of seed mix installed.
 - 16.3.2 The unit price shall include the furnishing of the seed, seeding, maintenance activities, and all other work required to complete the seeding work and not included under another bid item.
- 16.4 Fertilizing
 - 16.4.1 Payment shall be made on the basis of the unit price for fertilizer installed.
 - 16.4.2 The unit price shall include the furnishing of the fertilizer, fertilizing, maintenance activities, and all other work required to complete the fertilizing work and not included under another bid item.

- 16.5 Mulching
 - 16.5.1 Payment shall be made on the basis of the unit price for mulching installed.
 - 16.5.2 The unit price shall include the furnishing of mulch, mulching, maintenance activities, and all other work required to complete the mulching work and not included under another bid item.
- 16.6 Cover Crop
 - 16.6.1 Payment shall be made on the basis of the unit price for the seed installed.
 - 16.6.2 The unit price shall include the furnishing of seed, seeding, maintenance activities, and all other work required to complete the cover crop seeding work and not included under another bid item.

17. ADJUSTMENT OF UNIT QUANTITIES

- 17.1 All estimated quantities are approximate and used only:
 - 17.1.1 As a basis for estimating the probable cost of the Work
 - 17.1.2 For the purpose of comparing the Bids submitted for the Work.
- 17.2 The actual amounts of the work performed and materials furnished under unit price items may differ from the estimated quantities.
- 17.3 The basis of payment for work and materials will be the actual amount of work performed and materials furnished.

INSTRUCTIONS TO BIDDERS

CITY OF LINCOLN, NEBRASKA

PURCHASING DIVISION

1. BIDDING PROCEDURE

- 1.1 Bidder shall submit one (1) complete set of the bid documents and all supporting material, unless otherwise stipulated. All appropriate blanks shall be completed. Any interlineation, alteration or erasure on the specification document shall be initialed by the signer of the bid. Bidder shall not change the proposal form nor make additional stipulations on the specification document. Any amplified or qualifying information shall be on the bidder's letterhead and firmly attached to the specification document.
- 1.2 Bid prices shall be submitted on the Proposal Form included in the bid document.
- 1.3 Bidders may submit a bid on an "all or none" or "lump sum" basis, but should also submit a quotation on an item-by-item basis. Bidding documents shall be clearly marked indicating the kind of proposal being submitted.
- 1.4 Any person signing a bid for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.5 Bids received after the time and date established for receiving bids will be rejected.
- 1.6 If bidding on a Construction Contract, the City of Lincoln's Standard Specifications for Municipal Construction 2006 shall apply.
 - 1.6.1 Bidders may obtain this document from the City's Design Engineering Division of Public Works & Utilities for a small fee.
 - 1.6.2 Said document can be reviewed at Design Engineering or the Purchasing Division.
 - 1.6.3 The Standard Conditions are available on the web site.
<http://www.lincoln.ne.gov/city/pworks/engine/doconst/standard/stdnspec/index.htm>

2. BIDDER'S SECURITY

- 2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bidder's bond, may be required to be submitted with this bid document, as indicated on the Proposal Form.
- 2.2 If alternates are requested, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.
- 2.3 Such bid security will be returned to the unsuccessful bidders when the award of bid is made.
- 2.4 Bid security will be returned to the successful bidder(s) as follows:
 - 2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by the City.
 - 2.4.2 For all other contracts: upon approval by the City of the executed contract and bonds.
- 2.5 City shall have the right to retain the bid security of bidders to whom an award is being considered until either:
 - 2.5.1 A contract has been executed and bonds have been furnished.
 - 2.5.2 The specified time has elapsed so that the bids may be withdrawn.
 - 2.5.3 All bids have been rejected.
- 2.6 Bid security will be forfeited to the City as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this specification document:
 - 2.6.1 If the bidder fails to deliver the equipment or merchandise in full compliance with the accepted proposal and specifications.
 - 2.6.2 If the bidder fails or refuses to enter into a contract on forms provided by the City, and/or if the bidder fails to provide sufficient bonds or insurance within the time period as established in this specification document.

3. BIDDER'S REPRESENTATION

- 3.1 Each bidder by signing and submitting a bid, represents that the bidder has read and understands the specification documents, and the bid has been made in accordance therewith.
- 3.2 Each bidder for services further represents that the bidder has examined and is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bid documents.

4. CLARIFICATION OF SPECIFICATION DOCUMENTS

- 4.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the specification documents.

- 4.2 Bidders desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least five (5) calendar days prior to the date and time for receipt of bids.
- 4.3 Changes made to the specification documents will be made by written addenda to all known prospective bidders.
- 4.4 Oral interpretations or changes to the Specification Documents made in any other manner, will not be binding on the City; and bidders shall not rely upon such interpretations or changes.

5. ADDENDA

- 5.1 Addenda are additional documents issued by the City to prospective Bidders prior to the closing date for receipt of bids, which are intended to change or clarify the original plans and/or specifications, i.e. additions, deletions, modifications, or explanations.
- 5.2 Addenda will be mailed or delivered to all who are known by the City to have received a complete set of specification documents.
- 5.3 Copies of addenda will be made available for inspection at the office of the Purchasing Agent.
- 5.4 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.
- 5.5 Bidders shall ascertain prior to submitting their bid that they have received all addenda issued, and they shall acknowledge receipt of addenda on the proposal form.

6. ANTI-LOBBYING PROVISION

- 6.1 During the period between the bid advertisement date and the contract award, bidders, including their agents and representatives, shall not lobby or promote their bid with any member of the City Council or City Staff.

7. BRAND NAMES

- 7.1 Wherever in the specifications or proposal form brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.
- 7.2 It is the bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of the City that said item is equal to, or better than, the product specified.
- 7.3 Bids for alternate items shall be stated in the appropriate brand on the proposal form, or if the proposal form does not contain blanks for alternates, bidder MUST attach to the specification documents on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation. The bidder must indicate any variances by item number from the specification document no matter how slight. Bidder must fully explain the variances from the specification document, since brochure information may not be sufficient.
- 7.4 If variations are not stated in the proposal, it will be assumed that the item being bid fully complies with the City's specifications.

8. DEMONSTRATIONS/SAMPLES

- 8.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from the City.
- 8.2 Such demonstration can be at the City delivery location or a surrounding community.
- 8.3 If the bidder is proposing an alternate product, the City may request a sample of the exact item. Samples will be returned at bidder's expense after receipt by the City of acceptable goods. Bidders must indicate how samples are to be returned.

9. DELIVERY (Non-Construction)

- 9.1 Each bidder shall state on his proposal form the date upon which he can make delivery of all equipment or merchandise.
- 9.2 The City reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the proposal form.
- 9.3 All bids shall be based upon **inside** delivery of the equipment/ merchandise F.O.B. the City at the location specified by the City, with all transportation charges paid.
- 9.4 At the time of delivery, a designated City of Lincoln/Lancaster County employee will sign the invoice/packing slip. The signature will only indicate that the order has been received and the items actually delivered agree with the delivery invoice. This

signature does not indicate all items met specifications, were received in good condition and/or that there is not possible hidden damage or shortages.

10. WARRANTIES, GUARANTEES AND MAINTENANCE

- 10.1 Copies of the following documents must accompany the bid proposal for all items being bid:
 - 10.1.1 Manufacturer's warranties and/or guarantees.
 - 10.1.2 Bidder's maintenance policies and associated costs.
- 10.2 As a minimum requirement of the City, the bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to the City. Replacement parts of defective components shall be shipped at no cost to the City. Shipping costs for defective parts required to be returned to the bidder shall be paid by the bidder.

11. ACCEPTANCE OF MATERIAL

- 11.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.
- 11.2 Material delivered under this proposal shall remain the property of the bidder until:
 - 11.2.1 A physical inspection and actual usage of this material is made and found to be acceptable to the City; and
 - 11.2.2 Material is determined to be in full compliance with the specifications and accepted proposal.
- 11.3 In the event the delivered material is found to be defective or does not conform to the specification documents and accepted proposal, then the City reserves the right to cancel the order upon written notice to the bidder and return materials to the bidder at bidder's expense.
- 11.4 Successful bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of the City of Lincoln, Nebraska, as required by the specification documents or purchase orders.
- 11.5 Selling dealer's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

12. BID EVALUATION AND AWARD

- 12.1 The signed bid proposal shall be considered an offer on the part of the bidder. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 12.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each bidder so agrees in submitting the bid.
- 12.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 12.4 The bid will be awarded to the lowest responsible, responsive bidder whose proposal will be most advantageous to the City, and as the City deems will best serve its requirements.
- 12.5 The City reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, with or without alternates, by groups, or "lump sum"; to waive minor irregularities in bids; such as shall best serve the requirements and interests of the City.
- 12.6 In order to determine if the Bidder has the experience, qualifications, resources and necessary attributes to provide the quality workmanship, materials and management required by the plans and specifications, the Bidder may be required to complete and submit additional information as deemed necessary by the City. Failure to provide the information requested to make this determination may be grounds for a declaration of non-responsive with respect to the Bidder.
- 12.7 The City reserves the right to reject irregular bids that contain unauthorized additions, conditions, alternate bids, or irregularities that make the Bid Proposal incomplete, indefinite or ambiguous.

13. INDEMNIFICATION

- 13.1 The bidder shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or

destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Bidder, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Bidder to indemnify or hold harmless the City of Lincoln for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.

- 13.2 In any and all claims against the City or any of its members, officers or employees by an employee of the bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 13.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the bidder or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

14. TERMS OF PAYMENT

- 14.1 Unless stated otherwise, the City will begin processing payment within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

15. LAWS

- 15.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.
- 15.2 Bidder agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.

16. AFFIRMATIVE ACTION

- 16.1 The City of Lincoln-Lancaster County Purchasing Division provides equal opportunity for all bidders and encourages minority businesses and women's business enterprises to participate in our bidding process.

17. LIVING WAGE

- 17.1 The bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per section 2.81 of the Lincoln Municipal Code. This wage is subject to change every July.

18. EXECUTION OF AGREEMENT

- 18.1 Depending on the type of service provided, one of the following three (3) methods will be employed. The method applicable to this contract will be checked below:
 - ☐ a. This Contract shall consist of a **PURCHASE ORDER** and a copy of the suppliers signed bid (or referenced bid number) attached and that the same, in all particulars, becomes the agreement and contract between the parties hereto: that both parties thereby accept and agree to the terms and conditions of said bid documents, and that the parties are bound thereby and the compensation to be paid the Supplier is as set forth in the Supplier's Bid. Items not awarded, if any, have been deleted.
 - ☐ b. The contract shall consist of a **YEARLY AGREEMENT** and a copy of the suppliers signed bid attached and that the same, in all particulars, becomes the agreement and contract between the parties hereto. That both parties thereby accept and agree to the terms and conditions of said bid documents, and that the parties are bound thereby and the compensation to be paid the Supplier is as set forth in the Suppliers' Bid. Items not awarded, if any, have been deleted.
 - ☒ c. Three (3) copies of the **CONTRACT**, unless otherwise noted.
 - 1. City will furnish three (3) copies of the Contract to the successful Bidder who shall prepare attachments as required. Insurance as evidenced by a Certificate of Insurance, surety bonds properly executed, and Agreement signed with the date of signature shall be attached.
 - 2. The prepared documents shall be delivered to the City within 10 days (unless otherwise noted).
 - 3. The City will sign the Contract Agreement, insert the date of signature at the beginning of the Contract Agreement, prepare an Executive Order to go the Mayor for signature.
 - 4. Upon approval and signature from the Mayor, the City will return one copy to the Contractor.

INSURANCE REQUIREMENTS FOR ALL CITY CONTRACTS

1. GENERAL PROVISIONS

- A. **Indemnification.** The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.
- B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and City against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for the City of Lincoln, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- C. **Occurrence Basis Coverage.** All insurance shall be provided on an **occurrence basis** and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- D. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show the City of Lincoln as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.
- F. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

2. INSURANCE REQUIREMENTS

- A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and City from the following claims arising out of or resulting from or in connection

with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

- B. Worker's Compensation Insurance and Employer's Liability Insurance.** The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees.

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

C. Commercial General Liability Insurance.

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

Coverage	Min Amt	Notes
General	\$2,000,000	Aggregate
Products and Completed Operations	\$2,000,000	Aggregate
Personal and Advertising Injury	\$1,000,000	
Each Occurrence	\$1,000,000	
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).

(4) City may at its sole option, and in lieu of being additional insured on the Contractor's policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner's Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by the City being reimbursed or paid to the City.

D. Vehicle liability insurance coverage.

- The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. Railroad Protective Liability. If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with

minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

- F. **Umbrella or Excess Insurance.** The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of \$3,000,000 each occurrence and aggregate.
- G. **City included as Insured on Contractor's Policy – Endorsements required.**
The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that the City is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for the City and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include the city as an additional insured for purposes of Products and Completed Operations. The inclusion of the City as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for the City, whether on an excess, contributory or other basis regardless of any other insurance coverage available to the City.

3. **CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE**

- A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:
- (1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs arising out of or related to the Contract or the Contractor's activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs:
 - is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and
 - is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.
 - (2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.
- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against the City, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

- C. The obligations of indemnification herein shall not include or extend to:
- (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to the City and related to the Contract; and
 - (2) Any claims arising out of the negligence of the City to the extent the same is the sole and proximate cause of the injury or damage so claimed.
- D. In the event of any litigation of any such claims shall be commenced against the City, Contractor shall defend the same at Contractor's sole expense upon notice thereof from the City. Contractor shall notify the insuring company that the City reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of the City without the express written consent of the City.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against the City.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

- A. The Contractor shall promptly notify the City in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to the City shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event the City receives a claim or otherwise has actual knowledge of an any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, the City shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however the City shall have no duty to inspect the project to obtain such knowledge, and provided further that the City's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until the City completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of the City, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.

- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for City's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by the City.

CONTRACT DOCUMENTS

**CITY OF LINCOLN
NEBRASKA**

**Seeding at the Bluff Road Landfill
Phase 3 Capping System (Project #569343),
Phase 10 Liner System (Project #569282), and
Storm Water Basin Relocation (Project #569283)**

SPECIFICATION No. 06-259

**Contractor:
Name
Address
City, State Zip**

**CITY OF LINCOLN, NEBRASKA
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into this _____ day of _____ 2006, by and between _____
Company Name & Address _____ hereinafter called contractor, and the City of Lincoln, Nebraska, a
municipal corporation, hereinafter called the City.

WITNESS, that:

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans,
and other Contract Documents for the Work herein described, and has approved and adopted said
documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

(Name of Project & Specification No. 06-) _____ and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the
manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement;
and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined,
and canvassed the Proposals submitted in response to such advertisement, and as a result of such
canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work
for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a
part of this Contract;

EQUAL EMPLOYMENT OPPORTUNITY: In connection with the carrying out of this project, the
contractor shall not discriminate against any employee or applicant for employment because of race, color,
religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative
action to ensure that applicants are employed, and that employees are treated during employment, without
regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such
action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer;
recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and
selection for training, including apprenticeship.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the
agreements herein contained, the Contractor and the City have agreed and hereby agree as follows:

The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence,
transportation, and other construction accessories, services, and facilities; (b) furnish all materials,
supplies, and equipment specified to be incorporated into and form a permanent part of the complete
work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in
accordance with the provisions of the Contract Documents; and (d) execute construct, and compete all
Work included in and covered by the City's award of this Contract to the Contractor, such award being
based on the acceptance by the City of the Contractor's Proposal, or part thereof, as follows:

The City agrees to pay to the Contractor for the performance of the Work embraced in this
Contract, the Contractor agrees to accept as full compensation therefor, the following sums and prices for
all Work covered by and included in the Contract award and designated above, payment thereof to be
made in the manner provided by the City:

Amount

CONTRACT AGREEMENT

The Work included in this Contract shall begin as soon as possible from date of executed contract. All work shall be substantially complete by June 15, 2007.

GUARANTEE:

A performance bond in the full amount of the contract shall be required for all construction contracts. This bond shall remain in effect during the guarantee period as stated in the specifications.. Once the project is completed, the contractor may submit a maintenance bond in place of the performance bond.

The Contract Documents comprise the Contract, and consist of the following:

1. The Instructions to Bidders
2. The Accepted Proposal
3. The Contract Agreements
4. The Specifications
- *5. The City of Lincoln Standard Specifications for Municipal Construction
 - a. General Conditions
 - b. General Specifications
 - c. Construction & Materials Specifications
- ** 6. The Plans (including the Schedule of Approximate Quantities)
7. The Construction Bonds
8. The Special Provisions

* If project includes paving, water, sewer, sidewalk, lighting or traffic signal work, the City of Lincoln Standard Specifications for Municipal Construction will apply, which are on file in the office of the City Clerk. Copies may be obtained at the Office of the City Engineer.

** The following is an enumeration of the Plans, which are entitled:

CONTRACT AGREEMENT

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk

Mayor

Approved by Executive or No. _____
dated _____

EXECUTION BY CONTRACTOR

IF A CORPORATION:

Name of Corporation

ATTEST:

Secretary

(SEAL)

(Address)

By: _____
Duly Authorized Official

Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Name of Organization

Type of Organization

(Address)

By: _____
Member

By: _____
Member

IF AN INDIVIDUAL:

Name

Address

Signature

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

Construction Performance Bond

Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal
Place of Business):

Owner (Name and Address):

City of Lincoln
555 South 10th St.
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

SURETY

Company:

(Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

SURETY

Company:

(Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28a (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefor to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place Of Business):

Owner (Name and Address):

City of Lincoln
555 South 10th St.
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

SAMPLE

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.

By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.

9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)
AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323

§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on City Project/Specification No. _____, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in _____ County, Nebraska.

DATED this ____ day of _____, 2006.

By: _____

Title: _____

STATE OF NEBRASKA

COUNTY OF _____

)
SAMPLE
)ss.
)

On _____, 2006, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

Notary Public
(S E A L)